

REGINA -v- JOHN JACKSON

High Court of Solomon Islands
(Ward C.J.) sitting in Gizo
Criminal Case No. 8 of 1991
Hearing: 16 and 17 April 1991
Judgment: 18 April 1991

DPP, F. Mwanasalua for prosecution
A. Radclyffe for the accused

WARD CJ: This accused, John Jackson, is charged with the murder of George Talasasa in the night of 19th and 20th May 1990.

It is a tragic case where a public figure, well known in the town, died following a party at the house of the manager of the Gizo Hotel. Following the death, the people at the house at the time he died, lied to the police about events that night with the result the accused was not charged until nearly a year later and the prosecution now base their case largely on the testimony of admitted liars.

Certain facts are undisputed. The party included a number of local dignitaries and there were also a number of employees of the hotel present. The deceased arrived after the party had started and he was drinking thereafter. The accused, who works as a barman at the hotel, arrived at about 10.30 p.m. after he had finished work and he also drank after he arrived.

The deceased was the last guest to leave and, when he left, he was carrying one of the hotel beer coolers which prompted the accused to ask him to leave it in the house. A short time later the deceased was seen lying in an empty swimming pool that was a short distance from the side door of the house. Despite the fact that three or four people knew he was lying in the pool, nobody went to check he was all right until the morning at which time he was dead and had been for some hours.

The prosecution called three witnesses of the events that night all of whom were hotel employees and all of whom had made statements to the police shortly after those events which gave an untrue account. The reasons given for these early lies differed. Medyllyn Rigi was having a sexual relationship with the manager of the hotel and had

slept with him that night. At, she said, the suggestion of the accused, she gave an account of events to suggest she spent the night elsewhere. Sam Kilo gave the same explanation for his initial statement but later said it was because he knew the accused was responsible for the death and so he did it to cover for him. Nickson Malakula said it was because the accused came to him the next morning and paid him \$100 saying, "you know what I did, you no story". He therefore gave an account to the police that did not incriminate the accused.

I must consider whether such reasons may be credible and I feel the explanation given by Rigi and Kilo to cover her movements is credible. For reasons I shall return to later, I cannot accept any of the evidence of Malakula and I equally do not accept his explanation of the initial lies. In all cases, even if the explanation is acceptable, I must treat the evidence of such witnesses with great caution.

The prosecution case is that the accused had an argument with the deceased, struck him and pushed him into the pool. It was opened by the prosecution on the basis that during the argument, the accused struck the deceased a powerful blow on the right forehead following which the deceased was not acting normally. The accused then made the deceased walk towards the pool and pushed him in. It was stated Rigi and Kilo has seen this happen. The evidence of those witnesses did not support those opening statements.

It is clear there were two incidents. The first occurred when the deceased initially left the party by the door facing the road and fell down. At that time he was carrying a beer cooler. The accounts of that incident differ considerably. Malakula says that, as the deceased was in the door, the accused asked for the cooler and pushed the deceased so that he fell through the door onto the steps outside. Rigi and Kilo were in the room at the time. Rigi saw the deceased leave, saw no push by the accused and heard a shout afterwards from another employee that George had fallen. Malakula never heard such a shout and the man alleged to have shouted was never called to give evidence. It is not necessary, except for matters of credibility, to decide what happened then but I prefer the version given by Rigi.

Following his fall, the deceased came back to the house still clutching the cooler to look for his slippers. When or where he found them is not clear but he certainly had them when he died. Notwithstanding, he approached the door facing the swimming pool and, as he stood on the lower step, was confronted by the accused. According to Malakula the accused asked why he had come back after he had been told to leave. According to Rigi and Kilo the accused demanded the return of the cooler and was told by the deceased he would bring it back next day.

There followed a struggle and again the witnesses all vary in their accounts. Rigi saw the accused pull the deceased towards him by the shirt front and, fearing a fight, she ran to the road and saw no more. Kilo, who was in the room behind the accused to begin with but watched the later events from outside by a small laundry, saw the accused slap the deceased twice and then deliver a hard punch to the right forehead that caused him to turn away and stagger. The accused then pushed him hard in the back saying "You go now". Kilo did not stay to see any more but went to the road where he joined Rigi. On his account, that would have been only seconds after Rigi left but she described being on the road a long time (originally described as 20 minutes but later reduced) before Kilo joined her.

Malakula's account was that, after helping George to his feet following the fall by the road door, the witness went to the road and told another man, Scofield, to wait for him while he went back to look. He stood at the corner of the small laundry opposite to where Kilo was standing but, despite it being an open structure, neither saw the other. He saw the accused grab the deceased's shirt, then let go and slap him and finally punch him hard on the right centre forehead. At that point he was seen by the accused and so he ducked down and returned to the road where he rejoined Scofield and they left together. Although he must have come to the road seconds before Kilo, he did not see Kilo or Rigi and they never saw him.

The accounts of subsequent events given by Rigi and Kilo continue to differ. Both saw the deceased in the pool on their return from the road but each claims the other was in the house first and each told the other about the deceased. Sadly neither they nor the accused nor the manager of the hotel checked on the deceased. Instead they all went to sleep in the house until the morning.

Various comments were attributed to the accused thereafter. I am not satisfied they showed anything beyond a suggestion that he felt the deceased was drunk.

I can dispose of Malakula's evidence shortly. Not only did he lie in his initial statements but he lied to the court when he referred to the blow striking the deceased on the forehead. He agreed with counsel that the blow was in the mouth as he had said in his second statement. Despite the force he attributed to that blow, the deceased had no injury to his mouth or lips and a partial denture plate involving two front teeth was not even displaced. The witness also gave evidence about the type of drink the deceased had consumed and its effect on him that was in direct conflict with his statement and, I am satisfied, showed an intention to play it down by untruths. He also admitted that he stole a bottle of spirits when he left the party. More than once in court he refused to answer questions and I am satisfied his evidence cannot be believed and I disregard it further.

Kilo also changed his account in relation to the punch. In his earlier statement to the police he had described it as a blow to the face but in court he changed it also to the right forehead.

The significance of this change by both witnesses may be seen from the medical evidence which shows no injury to the head whatsoever except for a raised swollen bruise to the right forehead.

Of the remaining two witnesses, Rigi and Kilo, only the latter describes an incident that can have led to the fall. The punch, despite the lies it has prompted from the witness, is an incidental. The vital factor is the push by the accused. That was seen by only one person, Kilo. His account was that, when it occurred, the accused was standing by the bottom step and the deceased was two to three feet away. He said the pool edge was then only about four feet beyond the deceased. The distance from the pool to the house is 16 feet 4 inches and so the last distance, if the men were where he describes, must be wrong and I cannot accept it.

The only other evidence was that of the doctor who carried out a post mortem examination of the deceased in the afternoon of the 20th May and that of Superintendent Nonga who interviewed the accused in March of this year. The accused elected to exercise his right to remain silent in court. In his interview he admitted asking the deceased for the return of the cooler but denied anything untoward thereafter.

The medical evidence showed there were two injuries only - a large swollen bruise on the right forehead and a closed fracture of the left kneecap. Both indicated the application of considerable force but neither was the cause of death. That was, in the opinion of the doctor, the inhalation of the deceased's vomit causing asphyxiation. The learned Director of Public Prosecutions considered with the doctor a number of other ways that asphyxiation could occur but I am satisfied beyond any doubt on the evidence as explained by the doctor that it occurred by inhalation of vomitus and that was the cause of death. The doctor suggested that such an inhalation may have been the result of concussion from the blow to the head but he also explained that one of the commonest causes of such asphyxiation was extreme drunkenness.

I am satisfied on the evidence I have heard that the injury to the head was caused not by a blow from the accused but by the fall into the pool and it contributed to the vomiting and asphyxiation.

The question therefore left for the court is how George Talasasa came to fall.

In order to establish a charge of murder, the prosecution must prove the push by the accused caused the deceased to fall in the pool and, at that time, the accused intended to kill him or cause him grievous harm. If he did not have such an intention but caused the fall by an unlawful act, the accused could still be convicted of manslaughter. In either case I must be satisfied the asphyxiation was sufficiently linked to the push as to be directly caused by it.

Having considered all the evidence and, in relation to the testimony of Rigi and Kilo, looked for any evidence that may, at least in part, confirm or support their evidence. I am satisfied beyond reasonable doubt of the following facts.

The deceased George Talasasa was drinking heavily during the party and consumed considerable quantities of beer and stronger liquor. By the end of the party he was very drunk and unable to walk properly. When he returned to the door opposite the pool there was an altercation with the accused over a beer cooler as a result of which the accused grabbed him by the shirt and slapped him on the face. I am uncertain whether there was also a punch but I am satisfied all the blows were to the face and not the forehead and none was of sufficient force to cause any injury. They certainly did not cause the haematoma on the forehead.

I am not satisfied the accused pushed the deceased as described by Kilo.

I am satisfied that, after that incident, the deceased left the house and fell into the pool. There is no credible evidence to link that fall with the accused man in any way. Whether he fell because he tripped either over his slippers or the low wall or because he lost his balance through his drunkenness is not demonstrated in the evidence before the court and I cannot speculate about it.

I am satisfied that, falling as a drunken man, he took the full force of the impact on his head and knee. The court was not told the weight of the deceased but he was clearly, from the photographs, a powerfully built man. Even if his weight in the fall was largely taken on his knee and he then pitched forward, his forehead would have received the equivalent of a blow from a very heavy piece of concrete swung in an accelerating arc of at least 3 feet. Such a blow could have killed many lesser men.

I am satisfied beyond any doubt the combined effect of that blow and the drink he had consumed caused the asphyxia that killed him. It is uncertain how long after the fall he died. The evidence of the foecal material and its distribution suggests it was not immediate and that the deceased moved at least a short distance after the fall and the tragedy is that, had any of the people who knew he was in the pool gone to his aid

at that time, he may still have been alive. That they did not is, I am sure, because, having seen him earlier, they thought he was sleeping off his drink.

The evidence I have heard shows clearly that the real killer in this case was alcohol. Had it not been for that, George Talasasa would not have fallen, he would not have inhaled his vomit and choked and he would not have died. Neither would he have been left lying there on the assumption that he was simply a drunk sleeping off the alcohol.

I am not satisfied of any of the elements linking John Jackson directly to the death and he is acquitted.

(F.G.R. Ward)
CHIEF JUSTICE